

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.622(b)
Table of Allotments
Digital Television Broadcast Stations
(Kingston, New York)

MM Docket No. 00-121
RM-9674

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 24, 2002

Released: January 25, 2002

By the Chief, Video Services Division:

1. At the request of WRNN-TV Associates Limited Partnership ("WRNN"), licensee of station WRNN-TV, NTSC Channel 62, Kingston, New York, the Chief, Video Services Division, acting pursuant to delegated authority, has before it the *Notice of Proposed Rule Making*, 15 FCC 11521 (2000) ("*Notice*") in the above-captioned proceeding proposing changes to the DTV Table of Allotments. Specifically, WRNN requests the substitution of DTV Channel 48 for its assigned DTV Channel 21. The petitioner filed comments in support of the proposal. In addition, Long Island Educational Television Council, Inc. ("LIETC"), licensee of station WLIW(TV), Garden City, New York, also filed comments in support of the proposal. WKOB Communications, Inc. ("WKOB") licensee of low-power television station WKOB-LP, NTSC Channel 48, New York, New York, filed comments in opposition to the proposed rulemaking.

2. In its comments, WRNN states that its proposed allotment of Channel 48 meets the city-grade coverage requirements of Section 73.625(a) and the technical interference standards of Section 73.623(c)(2). It also states that implementation of its proposal will reduce interference generally and result in a net increase in interference-free DTV service to 5,931,013 people. Specifically, WRNN claims that operation on DTV Channel 48 will eliminate interference that DTV Channel 21 would cause to co-channel noncommercial station WLIW. LIETC supports the proposal insofar as it reduces interference to WLIW.

3. In its comments opposing the proposal, WKOB maintains that operation by WRNN-DT on Channel 48 will displace WKOB-LP low power television service on Channel 48. In this regard, it relates that WKOB-LP was licensed to provide its low power service on Channel 53 in New York City. It states that WKOB-LP's Channel 53 operation conflicted with the Channel 53 DTV allotment at Newark, New Jersey, and that it filed a displacement application to move to Channel

48 which was subsequently granted.¹ It maintains that Channel 48 is the only possible displacement channel for WKOB-LP in New York City, and if that channel is lost, it will be forced to go dark. Although it recognizes that WKOB-LP is authorized on a secondary basis, WKOB maintains that WRNN bears a heavy burden if it wants to alter the *status quo*, a change it can not justify without addressing the threat to WKOB-LP and the loss of its service to the public.

4. In addition to the loss of its low power service, WKOB asserts that WRNN's service proposal must be further examined. It states that the main reason WRNN's proposal will result in such a dramatic increase in population served is because it proposes to move its transmitter site closer to New York City, an area already well-served by other stations. WKOB urges examination of whether the station will continue to provide adequate service to Kingston or replicate its NTSC service area at the expense moving closer to the larger market. It also claims that while WRNN states that its proposal will result in a significant increase of people the station will serve, its proposed use of a highly directional antenna pattern raises an issue of how many people will lose service if WRNN changes channels and whether it will cause interference to other stations. Moreover, WKOB asserts that while WRNN claims it will reduce interference to WLIW(TV), it has not fully identified where such interference will be reduced or whether those areas presently have alternative public television service. It asserts that WRNN must analyze both gains and losses in populations and the number of other digital and analog services available in those areas for both Channels 21 and 48. Absent a showing that the public interest will be served by this channel change, WKOB maintains that these circumstances dictate that the *status quo* be maintained and WRNN's proposal rejected.

5. In reply comments, WRNN rejects WKOB's allegations, and contends that its proposal will serve the public interest. It reiterates that its proposal meets the Commission's city of license coverage requirements² and interference standards. WRNN states that its proposed change to DTV Channel 48 will not cause more than *de minimis* interference to another television station – which was recognized in the *Notice* and determined to satisfy the requirements of Section 73.623(c)(2) of the Commission's Rules. In addition, WRNN maintains that other public interest benefits will be realized by the adoption of the proposed rule making. These include reducing interference generally and eliminating harmful interference to WLIW(TV), which will ease the burden on that station in the transition to DTV and promote the general availability and acceptance of DTV service.

¹ WKOB asserts that more than one party applied for Channel 48, but it was the prevailing bidder at the subsequent broadcast auction, and its application (BPTTL-JG0601NK) to construct its low power station to operate on Channel 48 was granted on March 28, 2000. It maintains that it would not have bid so high for the channel had another channel been available.

² WRNN additionally asserts that its proposed service to Kingston will actually be 22 dBu greater than the new city-grade service rule recently adopted by the Commission. See *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 01-24 (released January 19, 2001) at ¶27.

6. With specific regard to WKOB-LP, WRNN states that that station is purely secondary and must accept interference from authorized full-power services. In that regard, it asserts that WKOB's concern about the displacement of its low power construction permit has already been considered and reject by the Commission as a matter of policy. In any event, it argues that to the extent that the Commission might even consider the effect of its Channel 48 proposal at all, the overwhelming public interest benefits of establishing and improving full-power DTV service far outweighs the displacement of a single authorization for a secondary service.

7. **Discussion.** We have carefully reviewed all of the pleadings before us and, for the reasons that follow, we find that the public interest will be served by adopting WRNN's DTV channel substitution proposal. In reaching this conclusion, we do not agree with WKOB that WRNN must protect WKOB-LP on Channel 48 in New York City. In that regard, in *Report and Order, In the Matter of Establishment of a Class A Service*, 15 FCC Rcd 6355 (2000), *clarified on recon.*, FCC 01-123 (released April 13, 2001), the Commission stated that LPTV stations would be treated as primary stations -- and their service areas protected -- only to the extent that they receive, or are eligible to receive, Class A status. 15 FCC Rcd at 6370-71, FCC 01-123 at ¶¶ 8-9. WKOB-LP is not eligible to be a Class A facility entitled to protection against WRNN's digital proposal.³ Accordingly, WKOB-LP's secondary status does not require that WRNN protect that station.

8. Nor are we persuaded that WRNN's proposal raises additional questions concerning service areas affected by its channel-change proposal. In this regard, WRNN's proposal complies with city-grade service and interference protection requirements, and is otherwise consistent with the Commission's technical standards. Moreover, WRNN's proposed channel change will result in increased digital service to the public in furtherance of the Commission's goals with respect to the establishment of digital television service. WKOB has demonstrated nothing to the contrary.

Conclusions and Ordering Clauses

9. Digital Channel 48 can be substituted and allotted to Kingston, New York, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (41-29-19 N and 73-56-52 W). Since Kingston is located within 400 miles of the U.S. - Canadian border, concurrence by the Canadian government has been obtained for this allotment. In addition, we find that this channel change is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for station WRNN operating with the following specifications:

³ On November 9, 2000, WKOB's petition for reconsideration of the dismissal of its Statement of Eligibility for Class A Low Power Television Status for the station was denied. The Commission has denied WKOB's application for review of that decision. *WKOB Communications, Inc.*, FCC 02-375 (released January 11, 2002).

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)	DTV Service Population (thousands)
NY Kingston	48	200	388	8,326

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 11, 2002, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, to read as follows:

Community

Channel No.

Kingston, New York

48

11. IT IS FURTHER ORDERED, That the comments filed by WKOB Communications, Inc. IS DENIED.

12. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, WRNN-TV Associates Limited Partnership shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 48 in lieu of DTV Channel 21 for WRNN-TV.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Alan E. Aronowitz, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau